IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.689 OF 2005
IN
NOTICE OF MOTION NO.455 OF 2005
IN
L.C. SUIT NO.536 OF 2005

Ramesh s/o. Raja Sosa — Appellant/org. plaintiff

vs.

Municipal Corpn. of Gr. Mumbai & anr. — Respondents/ org.Defendants

Mr.A.M.Sarogi for the appellant.

Mr.R.A.Malandkar for the B.M.C.-respondent.

CORAM : B.H. MARLAPALLE,J.

DATED : 15th September 2005

P.C.

Heard Mr.Sarogi, the learned counsel for the appellant, who has instituted L.C.Suit no.536/2005. Notice of Motion No.455/2005 taken out in the said Suit for temporary injunction has been dismissed by the learned Judge of the City Civil Court vide its order dated 30.4.2005 and hence this appeal.

2. The plaintiff was issued a show cause notice dated 4.1.2005 under Section 351 of the Mumbai Municipal Corporation Act, 1888 by the Assistant Commissioner of the defendant no.1- Corporation and the same notice was replied on 14.1.2005 as well as 15.1.2005. However, the

Corporation proceeded to pass the order dated 24.1.2005 and called upon the plaintiff to demolish the suit structure. This order has been challenged in the Suit.

3. Mr.Sarogi, the learned counsel for the plaintiff, submits that the plaintiff's father was staying in the premises of Ram Bhuvan building which was earlier known as "Janki Sadan" for more 30 years while in the employment in the Municipal Corporation. The suit structure was assessed to tax and the Ram Bhuvan Chawl Committee itself has issued a letter dated 6.11.1999 addressed to the Civil Supplies Officer certifying that plaintiff's father was occupying the suit structure for about 45 years. He also submitted that the reply dated 14.1.2005 was not considered by the Corporation while passing the order of demolition.

4. The service certificate issued by the respondent-Corporation to the plaintiff's father shows his local address as House No.226, Janki Sadan which is presently called as Ram Bhuvan building and it is a multi-storeyed structure. The Corporation in its written statement before the trial Court stated thus, "The Officers of these defendants J.E. Shri S.J.Sawant inspected the site at Room No.29, Ground Floor, Rambhuvan, Dr.S.S.Rao Road, Lalbaug Mumbai 400 012 on 1.1.2005 when it was found that unauthorised

construction of room with B.M.Wall and A.C.sheet roof admeasuring 13.10 x 19.4 and height 7.3 x 8.6 in the open space of Rambhuvan building constructed and occupied for residential purpose by; one Shri Ramesh Raja Sosa.".

5. The prima facie evidence shows that the notice structure bears room no.29 and it is located in the open space of Rambhuvan building. The learned counsel for the Corporation has placed before me the concerned file which shows that the residents of the said building addressed a complaint dated 14.12.2004 through their M.L.A. Mr.Dagadu Sapkal, who in turn vide his letter dated 21.12.2004 took up the matter with the Assistant Commissioner of the respondent-corporation and consequently the premises were inspected. The report dated 27.12.2004 made by the Superintendent is perused. There is another complaint dated 29.12.2004 submitted to the Assistant Commissioner by; the residents of Rambhuvan Chawl. This record prima facie shows that the plaintiff's father was staying in the but put up by him in the open space of Rambhuvan building. On his demise, the plaintiff, as alleged by the residents, demolished the hut and put up pacca construction which is the notice structure. Thus, there is no prima facie case made out to protect the said structure and, therefore, the order passed by the Court below does not call for

any interference. The appeal must fail at the threshold. It must also be noted that the residents have alleged that the notice structure is put up by blocking the drainage line and it has become hazardous for their health.

6. The appeal is dismissed in limine.

7. Civil Applications do not survive.

8. Mr.Sarogi, the learned counsel prays for continuation of the status-quo order for six weeks.

9. The oral application is hereby rejected.

(B.H. MARLAPALLE,J.)